Supreme Court

97-414 SEP - 3 1997

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No. _____

In The

Supreme Court of the United States

October Term, 1996

C. J. MOZZOCHI,

Petitioner,

vs.

FREEDOM OF INFORMATION COMMISSION and TOWN OF GLASTONBURY,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court And Appellate Court Of The State Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does a law which conditions the receipt of a public benefit upon "the nature, content, language or subject matter of [unrelated] verbal and written communications" of a citizen to agencies of government violate the First and Fourteenth Amendments?

II. Does the imposition of a civil penalty for seeking a public benefit violate the First and Fourteenth Amendments when the imposition of that penalty is based at least in part upon an evaluation of "the nature, content, language or subject matter of [unrelated] verbal and written communications" to the government?

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, C. J. Mozzochi, petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court and the Connecticut Appellate Court.

OPINIONS BELOW

The opinion of the Connecticut Appellate Court was rendered on March 11, 1997, and was published at 44 Conn. App. 463. It is printed as Appendix A to this petition. The *per curiam* denials of the Petitioner's motion to reargue by the Appellate Court and of his petition for certification by the Connecticut Supreme Court were rendered on April 2, 1997, and June 11, 1997. They are printed as Appendix B to this petition.

JURISDICTION

The Connecticut Appellate court rendered its decision on the Petitioner's appeal on March 11, 1997. A timely motion to reargue was denied by that court on April 2, 1997. A timely petition for certification by the Connecticut Supreme Court was denied, with two justices dissenting, on June 11, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall . . . deprive any person of . . . liberty or property without due process of law. . . . "

Section 1-19(a) of the Connecticut General Statutes provides in pertinent part: "Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of section 1-15. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such a public agency is located or of the Secretary of the State, as the case may be. . . . "

Section 1-15(a) of the Connecticut General Statutes provides in pertinent part: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. . . . "

Section 1-21i(b)(1) of the Connecticut General Statutes provides in pertinent part: "Any person denied the right to inspect or copy records under section 1-19 . . . may appeal therefrom to the Freedom of Information Commission. . . . "

Section 1-21i(b)(2) of the Connecticut General Statutes provides in pertinent part: "If the executive director of the commission has reason to believe an appeal . . . would perpetrate an injustice; or . . . would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for a hearing without first seeking and obtaining leave of the commission. . . . The commission shall grant such leave unless it finds that the appeal: . . . would perpetrate an injustice; or . . . would constitute an abuse of the commission's administrative process. . . . "

Section 1-21i(b)(3) of the Connecticut General Statutes provides in pertinent part: "In making the findings and determination under subdivision (2) of this subsection the commission shall consider . . . the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal."

Section 1-21j(a) of the Connecticut General Statutes provides in pertinent part: "There shall be a Freedom of Information Commission consisting of five members

appointed by the Governor, with the advice and consent of either house of the General Assembly, who shall serve for terms of four years. . . . "

Section 1-21l of the Connecticut General Statutes provides: "A pubic agency . . . may bring an action to the Superior Court against any person who was denied leave by the Freedom of Information Commission to have his appeal heard by the commission under subsection (b) of section 1-21i because the commission determined and found that such appeal or the underlying request would perpetrate an injustice or would constitute an abuse of the commission's administrative process. The action authorized under this section shall be limited to an injunction prohibiting such person from bringing any further appeal to the commission which would perpetrate an injustice or would constitute an abuse of the commission's administrative process. If, after such an injunction is ordered, the person subject to the injunction brings a further appeal to the Freedom of Information Commission and the commission determines that such appeal would perpetrate an injustice or would constitute an abuse of the commission's administrative process, such person shall be conclusively deemed to have violated the injunction and such agency may seek further injunctive and equitable relief, damages, attorney's fees and costs, as the court may order."

STATEMENT OF THE CASE

C. J. Mozzochi, Ph.D., is a research mathematician whose work has received international recognition. He is

also a longtime resident of Glastonbury, Connecticut, where he is a major property owner and occasional candidate for elective office. He has utilized the Connecticut Freedom of Information Act to obtain copies of public records as defined by the statute. He has always paid, or offered to pay, all direct and indirect costs to the town involved in complying with his requests. He has even offered to pay the salaries of any employees designated by the town to work on his requests. He believes, and has stated in his electoral campaigns and in press releases, that his research has uncovered several instances of municipal inefficiency and corruption.

In 1993, the state Freedom of Information Commission found as a fact that "Mozzochi has long engaged in an outrageous campaign of verbal and pictorial harassment of the [Town of Glastonbury], its officials and agencies. . . . Mozzochi is relentlessly and unreasonably attacking his local government through irrational distortions of public records and contumely against public officials."

In 1992 and 1993, Dr. Mozzochi had made requests to the Town of Glastonbury for the production of what concededly were public records within the meaning of the FOIA. He thereafter appealed to the Commission from Glastonbury's refusal to provide the records. The Commission rejected these appeals, finding "that the complainant has long engaged in outrageous campaign of verbal and pictorial harassment of the respondent." The Commission further found "that the complainant is relentlessly and unreasonably attacking his local government. . . . " Solely on the basis of these findings, the Commission rejected his appeals. In addition, and solely

upon the same basis, the Commission imposed a $500 civil penalty upon Mozzochi in each matter pursuant to Section 1-21i(b)(2) of the Connecticut General Statutes. He appealed to the Connecticut Superior Court.

The statute in question permits the Commission's Executive Director to refuse to schedule a hearing on any citizen appeal if he believes the appeal "would perpetrate an injustice . . . or . . . constitute an abuse of the Commission's administrative process. . . . " In making that determination, he and the Commission are directed to "consider . . . the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal."

The statute also permits any public agency which has benefitted from such a finding by the Commission to obtain an injunction prohibiting the citizen from again taking such an FOIA appeal. The Town of Glastonbury took advantage of this provision and, consolidating its action with Mozzochi's appeals, obtained from the Superior Court on September 5, 1995, an injunction permanently restraining Dr. Mozzochi and his privies "from commencing or bringing any further appeals to the Freedom of Information Commission (1) which are brought frivolously, without reasonable grounds, and for the principal purpose of harassment . . . and (2) which would perpetrate an injustice, and/or constitute an abuse of the Commission's administrative process. . . . " In the same ruling, the court rejected all of Mozzochi's appeals.

Mozzochi appealed *pro se* to the Appellate Court, which affirmed all the lower court rulings on March 11,

1997, at 44 Conn. App. 463. Counsel then appeared and timely moved to reargue on First and Fourteenth Amendment grounds. That motion was denied on April 2 in an order mailed April 3, 1997. Mozzochi then sought certification from the Connecticut Supreme Court, expressly challenging the constitutionality, under the First and Fourteenth Amendments, of the applicable provisions of the statute and of the imposition of penalties upon him. With two Justices dissenting, the Supreme Court denied certification.

REASONS FOR GRANTING THE WRIT

CONDITIONING THE RECEIPT OF A PUBLIC BENEFIT UPON THE NATURE, CONTENT, LANGUAGE OR SUBJECT MATTER OF UNRELATED VERBAL AND WRITTEN COMMUNICATIONS OF A CITIZEN TO HIS GOVERNMENT, AND BASING A CIVIL PENALTY AGAINST SUCH CITIZEN UPON AN EVALUATION OF THE CONTENT AND SUBJECT MATTER OF THOSE UNRELATED COMMUNICATIONS, VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS

May a local government constitutionally condition the issuance of a driver's license or a zoning permit upon the nature, content, language or subject matter of unrelated verbal and written communications of a citizen to his government?

This is not a case challenging the undoubted power of an administrative agency to protect itself by punishing abusive or contumacious filings, or precluding future filings because of the content or nature of past filings

with that agency by the same litigant. *E.g., United States v. Martin-Trigona*, 767 F.2d 35, 759 F.2d 1017, 756 F.2d 260 (2d Cir. 1985). In this case, rather, a state agency prohibited a citizen from ever gaining access to public records – and fined him for attempting to do so – because of wholly unrelated letters, speeches and newspaper publications in which the citizen had criticized his local government. Moreover, the state statute under which the agency acted clearly permits the agency to do what it did and is available for use against any other citizens who in the future may in some manner give a speech or write a letter, in a different forum and on a different topic, which the agency learns about and disapproves.

This court has held in the past that unrelated political expressions may not be used by government agencies in deciding whether to award public contracts. *Board of County Commissioners v. Umbehr*, ___ U.S. ___, 116 S. Ct. 2342 (1996); *O'Hare Truck Service, Inc. v. City of Northlake*, ___ U.S. ___, 116 S. Ct. 2353 (1996). It has, of course, long been accepted that public employment in a non-policy-setting position cannot be so conditioned. *E.g., Elrod v. Burns*, 427 U.S. 347 (1976); *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990). Clearly, then, the mere right to see and obtain copies of public records cannot constitutionally be conditioned on the political correctness of one's prior and unrelated speech. Yet that is what Connecticut law provides and that is what happened to C. J. Mozzochi.

The statute in question here is, of course, a veritable paradigm of vagueness and overbreadth. It permits an agency of the state to condition an aspect of a citizen's

participation in self-government upon the citizen's previous political expressions without any standards or limitations whatever. Not only that, it permits the agency to fine the hapless politically-disfavored citizen who, having once been banned, tries again to view public government records. This statute is far more capable of being abused by politically motivated bureaucrats than the statutes and prohibitions struck down by this court on many prior occasions. *E.g., Akron v. Akron Center for Reproductive Care,* 462 U.S. 416 (1983); *Hynes v. Mayor and Council of Borough of Oradell,* 425 U.S. 610 (1976); *Gooding v. Wilson,* 405 U.S. 518 (1972); *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972); *Palmer v. City of Euclid,* 402 U.S. 544 (1971). And this statute is not merely theoretical. It has in fact been applied to both ban and fine C. J. Mozzochi upon the basis of his prior, unrelated, written communications to and about the town government in the community where he has resided, has sought elective office, and has been a major property owner and taxpayer for decades.

Certiorari should be granted in this case. Although the case itself involves an egregious abuse of political power and violation of First Amendment rights, it concerns far more than its own facts. This statute can and will be enforced against others in the future, in the service of whatever political ideology may be in favor at any given moment, and is a model for other jurisdictions in the use of government power to regulate the free exchange of political ideas. It represents a significant threat to core libertarian values which this court needs to protect.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

C. J. Mozzochi, Petitioner

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His Attorney

APPENDIX A

C. J. MOZZOCHI v. FREEDOM OF INFORMATION COMMISSION ET AL. TOWN OF GLASTONBURY v. C. J. MOZZOCHI
(15193)

O'Connell, Spear and Hennessey, Js.

Argued January 16 – officially released March 11, 1997

Appeals in the first four cases from decisions by the defendant denying the plaintiff's request for certain information from the town of Glastonbury, and action in the fifth case to enjoin the defendant in that case from bringing certain actions to the freedom of information commission, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the cases were consolidated; thereafter, the cases were tried to the court, *Freed, J.*; judgment dismissing the appeals in the first four cases and granting the injunction in the fifth case, from which the plaintiff in the first four cases, the defendant in the fifth case, appealed to this court. *Affirmed.*

C. J. Mozzochi, pro se, the appellant (plaintiff in the first four cases, defendant in the fifth case).

Victor R. Perpetua, for the appellee (named defendant in the first four cases).

William S. Rogers, for the appellee (defendant town of Glastonbury et al. in the first four cases, plaintiff in the fifth case).

(OPINION)

PER CURIAM. The plaintiff C. J. Mozzochi[1] appeals from the judgment of the trial court enjoining him from bringing further appeals to the defendant freedom of information commission (FOIC) that (1) are brought frivolously without reasonable grounds and for the purpose of harassment and (2) would perpetuate an injustice or constitute an abuse of the FOIC's administrative process. The injunction is further limited to appeals that are of the same kind, nature, scope, magnitude, frequency and purpose as the requests that were involved in four designated FOIC requests and a specified FOIC advisory opinion.

We note that the plaintiff appears pro se. It is, of course, the policy of this court "to allow great latitude to a litigant who, either by choice or necessity, represents himself in legal proceedings, so far as such latitude is consistent with the just rights of any adverse party." *Bitonti v. Tucker,* 162 Conn. 626, 627, 295 A.2d 545, cert. denied, 409 U.S. 851, 93 S. Ct. 62, 34 L. Ed.2d 94 (1972). This is because "[a] party who, unskilled in such matters, seeks to remedy some claimed wrong by invoking processes which are at best technical and complicated, is very ill advised and assumes a most difficult task." *O'Connor v. Solomon,* 103 Conn. 744, 745, 131 A. 736 (1926). Nonetheless, while the court exhibits some degree

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[1] C. J. Mozzochi is the plaintiff in four appeals from decisions by the freedom of information commission. He is the defendant in the town of Glastonbury's action to enjoin him from filing certain other actions with the commission. We refer to him as the plaintiff in this opinion.

of leniency toward a pro se appellant, it cannot entirely disregard established principles of law.

We have carefully considered the record, briefs and the oral arguments of the parties. Having applied the appropriate standard of review, we conclude that the trial court's decision conforms to the applicable law.

The judgment is affirmed.

APPENDIX B

NO. A.C.15193

C.J. MOZZOCHI, PH.D.	:	APPELLATE COURT
v	:	STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION ET AL.	:	APRIL 2, 1997

ORDER

THE MOTION OF THE APPELLANT, FILED MARCH 19, 1997, FOR REARGUMENT,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

ORDERED DENIED.

BY THE COURT,

/s/ Illegible
ASSISTANT CLERK - APPELLATE

NOTICE SENT: 4/3/97
JOHN R. WILLIAMS
FREEDOM OF INFORMATION COMMISSION
TYLER, COOPER & ALCORN
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SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-96-0358

C.J. Mozzochi

v.

Freedom of Information Commission et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate court (44 Conn. App. 463 [AC 15193], it is hereby ordered that said petition be, and the same is hereby denied.

Berdon and McDonald, Js., dissenting. We would grant the plaintiff's petition for certification to appeal.

BY THE COURT,

/s/ Alan M. Gannuocio
ASSISTANT CLERK-APPELLATE

Dated: June 11, 1997
Notice sent: 6/11/97
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SAO
John R. Williams
Tyler, Cooper & Alcorn
Freedom of Information Commission

John R. Williams in support of petition; *William B. Rogers* and *Victor Perpetua* in opposition.